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Attorneys for Litchfield Park Service Company

W-01427A-11-0419

**BEFORE THE ARIZONA CORPORATION COMMISSION**

IN THE MATTER OF THE APPLICATION  
OF LITCHFIELD PARK SERVICE  
COMPANY FOR A WAIVER UNDER  
A.A.C. R14-2-806 OR, IN THE  
ALTERNATIVE, NOTICE OF INTENT TO  
REORGANIZE UNDER A.A.C. R14-2-803.

DOCKET NO: W-01427A-11-\_\_\_\_\_

APPLICATION FOR A WAIVER  
UNDER A.A.C. R14-2-806 OR, IN THE  
ALTERNATIVE, NOTICE OF INTENT  
TO REORGANIZE UNDER  
A.A.C. R14-2-803

Pursuant to A.A.C. R14-2-806, Litchfield Park Service Company ("LPSCO" or "the Company"), an Arizona public service corporation, hereby requests that the Arizona Corporation Commission (the "Commission") waive compliance with the requirements of A.A.C. R14-2-801 to R14-2-806 ("the Affiliated Interests Rules") with respect to the transaction between LPSCO's parent, Liberty Water Co. ("Liberty Water"), a Delaware corporation, formerly Algonquin Water Resources of America, Inc., and the certain shareholders, Chuck Kennedy of Phoenix, Arizona, Ali Razi of Los Angeles, California and Babak Razi of Los Angeles, California ("Sellers"), which shareholders are the owners of Entrada Del Oro Sewer Company, Inc. ("EDO"), an Arizona corporation, under which transaction the Sellers are selling to Liberty Water all of the issued and outstanding shares of EDO's common stock ("the Transaction").

LPSCO files this Application as Liberty Water's only Class A subsidiary in Arizona. Additionally, because LPSCO has separate water and sewer divisions for which the Commission has separate company number designations, this Application is being

1 filed under both company numbers thereby creating two docket numbers. LPSCO will  
2 request consolidation of these matters.

3 The nature of the Transaction and the basis for LPSCO's requested waiver are set  
4 forth below and have been verified by Greg Sorensen, Vice President of Service Delivery  
5 for Liberty Water, in accordance with A.A.C. R14-2-806(B). In short, none of the parties  
6 to the Transaction are public service corporations as defined in Article 15, § 2 of the  
7 Arizona Constitution, and the Transaction will not have any adverse effect on LPSCO's  
8 provision of utility services, or EDO's. Under these circumstances, and because the  
9 Transaction serves the public interest, LPSCO requests that the Commission declare that  
10 the Transaction is not subject to the Affiliated Interests Rules or grant a waiver from such  
11 rules under A.A.C. R14-2-806(A).

12 Alternatively, and in the event that the Commission declines to grant such waiver,  
13 LPSCO hereby gives notice to the Commission pursuant to A.A.C. R14-2-803 that the  
14 acquisition of the common stock of EDO by Liberty Water will result in a  
15 "reorganization," as such term is defined in the Affiliated Interests Rules. Given the  
16 nature of the Transaction, and the fact that it has not impaired LPSCO's financial status,  
17 prevented LPSCO from attracting capital on fair and reasonable terms, or impaired  
18 LPSCO's ability to provide safe, reasonable and adequate service, LPSCO requests that  
19 the Commission approve the reorganization, preferably without a hearing, pursuant to  
20 A.A.C. R14-2-803(C).

## 21 **OVERVIEW OF EDO AND LIBERTY WATER**

22 1. EDO is a public service corporation engaged in providing wastewater utility  
23 service in portions of Pinal County, Arizona, pursuant to a certificate of public  
24 convenience and necessity ("CC&N") granted by the Commission. EDO's service  
25 territory lies just east of Gold Canyon Sewer Company's ("GCSC's") service territory.  
26 GCSC is an affiliate of LPSCO. At the present time, EDO serves approximately 325

1 customers. EDO's current rates were authorized in Decision No. 68306 (November 14,  
2 2005).

3 2. EDO has no matters pending before the Commission or otherwise involving  
4 the Commission that would be affected by the Transaction. The matters that are pending  
5 are described in **Exhibit 1**, attached hereto. EDO is in compliance with local and state  
6 regulatory requirements. The Maricopa County Environmental Services Department  
7 ("MCESD") is responsible for regulating EDO's compliance with state and federal  
8 wastewater standards. EDO's property taxes are current.

9 3. Liberty Water, a Delaware corporation, is a wholly owned indirect water  
10 utility subsidiary of Algonquin Power & Utilities Corp. ("APUC"). APUC's primary  
11 business is ownership of power generating and other utility infrastructure facilities  
12 through investments in securities of these utility subsidiaries.

13 4. Liberty Water provides regulated utility services to 20 water distribution and  
14 wastewater treatment utility systems in Arizona, Texas, Missouri, and Illinois. Liberty  
15 Water supplies all of the day-to-day administration and operations personnel for these  
16 regulated utilities. Liberty Water has been managing and operating EDO for the past few  
17 years.

### 18 OVERVIEW OF LPSCO

19 5. LPSCO, a wholly owned subsidiary of Liberty Water, is a public service  
20 corporation engaged in providing water and wastewater utility service in portions of  
21 eastern Maricopa County, Arizona, pursuant to a CC&N granted by the Commission. At  
22 the present time, LPSCO provides water service to approximately 16,500 water customers  
23 and 18,500 wastewater customers. LPSCO's current rates and charges were authorized in  
24 Decision No. 72026 (December 10, 2010).

25 6. LPSCO has no matters pending before the Commission or otherwise  
26 involving the Commission that would be affected by the Transaction. The matters that are

1 pending are described in **Exhibit 2**, attached hereto. LPSCO is in compliance with local  
2 and state regulatory requirements. ADEQ and MCESD are responsible for regulating  
3 LPSCO's compliance with state and federal water and wastewater standards. LPSCO's  
4 property taxes are current.

5 **THE TRANSACTION BETWEEN LIBERTY WATER AND EDO**

6 7. On August 26, 2008, Liberty Water entered into a Stock Purchase  
7 Agreement with Sellers for the purchase of all outstanding shares of EDO's common  
8 stock (the "Stock Purchase Agreement"). A copy of the Stock Purchase Agreement will  
9 be provided subject to an appropriate confidentiality agreement. Liberty Water paid  
10 \$635,000 cash to Sellers for EDO's common stock. The stock shares are escrowed and  
11 will be transferred once the Commission grants a waiver or, in the alternative, approves  
12 the Transaction. Liberty Water has also paid growth premiums totaling \$279,000. To  
13 date the purchase price is \$914,000. That amount will increase based on customer growth  
14 expected through 2018.

15 8. Also on August 26, 2008, Liberty Water and EDO entered into an  
16 Agreement for Labor Services (the "Management Agreement"). A copy of the  
17 Management Agreement will be provided subject to an appropriate confidentiality  
18 agreement. By way of the Management Agreement, Liberty Water maintains and operates  
19 EDO's wastewater treatment plant.

20 9. The Transaction does not involve the sale, lease, assignment, encumbrance  
21 or transfer or conveyance of any of EDO's utility plant, assets, revenue or property. The  
22 only change to EDO as a result of the Transaction is that EDO, which elected  
23 S-Corporation tax status, will revert back to a C-Corporation, as EDO will become a  
24  
25  
26

1 subsidiary of Liberty Water which is a C-Corporation.<sup>1</sup> Nevertheless, the Transaction will  
2 be transparent to EDO customers, as well as to LPSCO customers.

3 10. The Transaction between Liberty Water and EDO will not alter the utility  
4 service provided by LPSCO. LPSCO has provided and will continue to provide safe and  
5 reliable utility service to customers in its service territory. Moreover, LPSCO has  
6 operated and will continue to operate as a public service corporation and be subject to the  
7 Commission's authority and jurisdiction.

8 **REQUEST FOR WAIVER UNDER RULE 806**

9 11. Based on the nature of the Transaction and the lack of any impact on  
10 LPSCO and its operations, LPSCO submits that, to the extent the Affiliated Interests  
11 Rules may apply to this Transaction, a waiver of such rules is appropriate and in the  
12 public interest under A.A.C. R14-2-806 ("Rule 806").

13 12. LPSCO believes that a waiver is appropriate and in the public interest  
14 because the Affiliated Interests Rules should not be applied to the sale of issued and  
15 outstanding common stock by and between an entity that is merely a public utility holding  
16 company, and a Class D utility (EDO). *See, e.g., Arizona Corp. Comm'n v. Consolidated*  
17 *Stage Co.*, 63 Ariz. 257, 161 P.2d 110 (1945). LPSCO respectfully submits that the  
18 Commission's jurisdiction over public service corporations does not permit the  
19 Commission to disapprove or otherwise regulate transactions of this nature.

20 13. The Transaction will not alter the capital structure of LPSCO. LPSCO will  
21 not assume any debt or other liabilities in connection with the Transaction, nor, as stated,  
22 will any utility plant, revenue or other assets currently owned by EDO be sold, transferred  
23 or encumbered. LPSCO's ability to raise capital and its creditworthiness will not be  
24 impaired by the Transaction.

25 \_\_\_\_\_  
26 <sup>1</sup> EDO's 2008, 2009, and 2010 Utility Annual Reports on file with the Commission incorrectly reflect that  
EDO is a C-Corporation.

1           14. The Transaction will not cause any change in LPSCO's cost of providing  
2 utility service. As stated, the Transaction will not cause any change in the manner in  
3 which LPSCO will be operated. The Transaction will not negatively impact LPSCO's  
4 utility service to customers; nor will the Transaction eliminate the Commission's existing  
5 regulatory oversight and approval authority relating to LPSCO.

6           15. LPSCO is fully cognizant of its responsibility to the Commission and its  
7 attendant obligations as a public service corporation to comply with the requirements of  
8 lawful regulation. LPSCO respectfully submits that the nature of the Transaction between  
9 Liberty Water and EDO is such that either the Affiliated Interests Rules do not apply or,  
10 in the alternative, the public interest justifies a waiver of compliance with the  
11 requirements set forth in the Affiliated Interests Rules.

12           **NOTICE OF INTENT – INFORMATION REQUIRED BY RULE 803**

13           16. If the Commission determines that it has jurisdiction over the Transaction  
14 and declines to grant a waiver under Rule 806, then LPSCO requests in the alternative that  
15 the Commission approve the Transaction under A.A.C. R14-2-803 ("Rule 803").  
16 Pursuant to this alternative request under Rule 803, LPSCO provides the following  
17 information specified in Rule 803.

18           **1. The Names and Business Addresses of the Proposed Officers and Directors of**  
19           **the Holding Company.**

20           17. Attached as **Exhibit 3** is a list of the names and business addresses of the  
21 individuals responsible for the management of Liberty Water.

22           **2. The Business Purposes for Establishing or Reorganizing the Holding**  
23           **Company.**

24           18. The purpose of the Transaction is set forth above in paragraphs 7 – 10.

25           19. As stated above, Liberty Water is a trusted developer and operator of utility  
26 infrastructure and works hard to maintain its reputation for quality and reliability.

1     **3.     The Proposed Method of Financing the Holding Company and the Resultant**  
2     **Capital Structure.**

3             20.     As stated above, Liberty Water paid \$635,000 in cash to Sellers, and has  
4     paid growth premiums in the amount of \$279,000, for a total of \$914,000. There will be  
5     no material changes to Liberty Water's capital structure as a result. None of the  
6     acquisition price will be passed through to ratepayers – there will be no change to EDO's  
7     balance sheet and no acquisition adjustment.

8     **4.     The Resultant Effect on the Capital Structure of the Public Utility.**

9             21.     Because EDO is not being acquired by LPSCO, the capital structure of  
10    LPSCO will not change as a result of the Transaction, nor will the capital structure of  
11    EDO – the transaction is merely the sale of the equity shares in EDO.

12    **5.     An Organizational Chart of the Holding Company That Identifies All**  
13    **Affiliates and Their Relationships within the Holding Company.**

14             22.     An organizational chart identifying Liberty Water and its affiliates and  
15    subsidiaries is attached as **Exhibit 4**. The Transaction between Liberty Water and EDO  
16    will not alter the utility service provided by any of Liberty Water's regulated affiliates and  
17    subsidiaries.

18    **6.     The Proposed Method for Allocating Federal and State Income Taxes to the**  
19    **Subsidiaries of the Holding Company.**

20             23.     The Transaction will not in the future cause any federal or state income  
21    taxes or any other taxes resulting from the activities of one Liberty Water affiliate to be  
22    allocated to another.

23    **7.     The Anticipated Changes in the Utility's Cost of Service and the Cost of**  
24    **Capital Attributable to the Reorganization.**

25             24.     As previously stated, because EDO is not being acquired by LPSCO, the  
26    Transaction will not have any effect on the capital structure of LPSCO. Likewise, the

1 Transaction is not anticipated to result in any material changes to LPSCO's cost of service  
2 or its cost of capital. LPSCO will continue to be operated as a single utility under Liberty  
3 Water's shared services model, which is designed to pool and share expenses to minimize  
4 costs. LPSCO will continue to contract for services, equipment and supplies, and will  
5 continue to raise capital like other Arizona utilities. The only change is in the ownership  
6 of EDO's outstanding common stock by Liberty Water. Similarly, EDO will also operate  
7 as a single utility under Liberty Water's shared services model, and will face no changes  
8 to its capital structure or its cost of capital. Further, because Liberty Water has already  
9 been running EDO, there will be no change to its cost of service as a result of this  
10 transaction.

11 **8. A Description of Diversification Plans of Affiliates of the Holding Company.**

12 25. Liberty Water intends to focus on its core utility and related businesses and  
13 does not have any immediate plans to diversify its operations of affiliates. Liberty  
14 Water's business strategy is to own and operate water and wastewater treatment facilities  
15 in the United States. This Transaction has not resulted in any change to Liberty Water's  
16 strategy. And, as stated above, LPSCO will be operated as it always has been—under  
17 Liberty Water's shared services model—but will not be combined or merged with any  
18 other Liberty Water entity for income tax or rate-making purposes at this time. And EDO  
19 will be operated as it has been for the past three years – but it will become, officially, a  
20 Liberty Water utility.

21 **9. Copies of All Relevant Documents and Filings With the United States**  
22 **Securities and Exchange Commission and Other Federal or State Agencies.**

23 26. None.  
24  
25  
26



1 **10. The Contemplated Annual and Cumulative Investment in Each Affiliate for**  
2 **the Next Five Years, In Dollars and as a Percentage of Projected Net Utility**  
3 **Plant, and An Explanation of the Reasons Supporting the Level of Investment**  
4 **and the Reasons This Level Will Not Increase the Risks of Investments in the**  
5 **Public Utility.**

6 27. As stated above in paragraph 4, Liberty Water owns 20 water and  
7 wastewater treatment utility systems in the United States. As such, it would be extremely  
8 difficult to provide this information due to the large number of companies that are an  
9 "affiliate" of Liberty Water under the definition of "affiliate" provided in R14-2-801(1).  
10 Liberty Water has access to the capital markets through its ultimate parent, APUC, and  
11 will be able to support EDO as appropriate. The Transaction will not increase the level of  
12 investment risk in any of the Liberty Water affiliates, including LPSCO.

13 28. For the reasons previously explained, this Transaction will not increase the  
14 risks of investment in LPSCO. No utility funds will be co-mingled with non-utility funds,  
15 nor will any cross-subsidization of non-utility activities take place. Further, the  
16 Transaction will not alter the Commission's existing regulatory oversight and approval  
17 authority with respect to LPSCO's operations and its dealings with affiliates. For these  
18 reasons, the Transaction will not increase the level of risk associated with an investment  
19 in LPSCO.

20 29. The Transaction will also not affect the risk of investment in EDO. None of  
21 its utility funds will be co-mingled with non-utility funds, nor will any cross-subsidization  
22 of non-utility activities take place. The Transaction will not alter the Commission's  
23 existing regulatory oversight and approval authority with respect to EDO's operations and  
24 its dealings with the Liberty affiliates it will have post-Transaction. The Transaction will  
25 therefore not increase the level of risk associated with investment in EDO.  
26

1 **11. An Explanation of the Manner in Which the Utility Can Ensure That**  
2 **Adequate Capital Will Be Available for the Construction of New Utility Plant**  
3 **and For Improvements In Existing Utility Plant At No Greater Cost Than If**  
4 **the Utility or Its Affiliate Did Not Organize or Reorganize a Public Utility**  
5 **Holding Company.**

6 30. Liberty Water has funding available from its cash flow from its various  
7 water and wastewater operations. As the Commission has also found in several dockets  
8 involving Liberty Water's subsidiaries in Arizona, access to capital through the ultimate  
9 parent, APUC, is of benefit to the ratepayers of LPSCO and its Arizona affiliates. Such  
10 access to capital will be unaffected by this transaction.

11 **RELIEF REQUESTED**

12 WHEREFORE, for the reasons set forth herein, LPSCO hereby requests for itself,  
13 Liberty Water, EDO and Sellers, an order from the Commission that (i) declares that the  
14 Affiliated Interests Rules, A.A.C. R14-2-801 to R14-2-806, do not apply to the  
15 Transaction between Liberty Water and Sellers or, alternatively, (ii) grants a waiver under  
16 A.A.C. R14-2-806, with respect to the sale of EDO's outstanding shares of common stock  
17 to Liberty Water.

18 Alternatively, LPSCO requests that the Commission approve the Transaction under  
19 A.A.C. R14-2-803 without a hearing. For the reasons set forth above, the Transaction will  
20 not impair LPSCO's financial status, prevent LPSCO from attracting capital on fair and  
21 reasonable terms, or impair the ability of LPSCO to provide safe, reasonable and adequate  
22 service.

23 LPSCO additionally requests that, should the Commission determine the  
24 Transaction is subject to A.A.C. R14-2-803, the following conditions apply:

- 25 a. EDO will be ordered to refrain from seeking an acquisition adjustment due  
26 to this transaction in any future rate case; and
- b. EDO will be ordered to maintain its quality of service. Under Liberty  
Water's management, EDO has had no customer complaints and no service

1 interruptions. EDO shall continue to provide the same level of customer  
2 service and system reliability after the Transaction.

3 RESPECTFULLY SUBMITTED this 22<sup>nd</sup> day of November, 2011.

4 FENNEMORE CRAIG, P.C.

5  
6 By: \_\_\_\_\_

7 Jay B. Shapiro  
8 Todd C. Wiley  
9 3003 North Central Avenue  
10 Suite 2600  
11 Phoenix, Arizona 85012  
12 Attorneys for Litchfield Park Service  
13 Company

14 **ORIGINAL** and fifteen (15) copies  
15 of the foregoing were filed  
16 this 22<sup>nd</sup> day of November, 2011, to:

17 Docket Control  
18 Arizona Corporation Commission  
19 1200 W. Washington St.  
20 Phoenix, AZ 85007

21 **COPY** of the foregoing was hand delivered  
22 this 22<sup>nd</sup> day of November, 2011, to:

23 Lyn Farmer, Chief  
24 Hearing Division  
25 Arizona Corporation Commission  
26 1200 W. Washington St.  
Phoenix, AZ 85007

Janice Alward, Chief Counsel  
Legal Division  
Arizona Corporation Commission  
1200 W. Washington Street  
Phoenix, AZ 85007

1 Steven M. Olea, Director  
2 Utilities Division  
3 Arizona Corporation Commission  
4 1200 W. Washington St.  
5 Phoenix, AZ 85007

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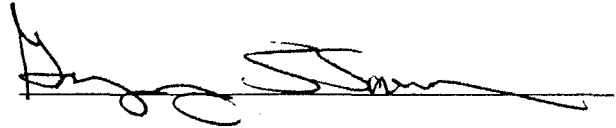
VERIFICATION

STATE OF ARIZONA     )  
                                      ) ss.  
County of Maricopa     )

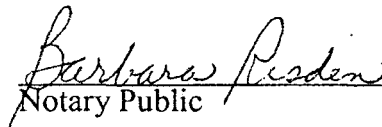
Greg Sorensen, being first duly sworn upon his oath, deposes and says:

1. I am the Vice President of Service Delivery for Liberty Water, and am authorized to make this verification on behalf of Litchfield Park Service Company.

2. I have read the foregoing Application for a Waiver Under A.A.C. R14-2-806 or, In the Alternative, Notice of Intent to Reorganize Under A.A.C. R14-2-803, and I hereby verify that the statements contained therein are true and correct to the best of my information, knowledge and belief.

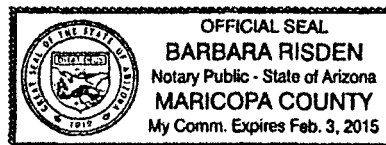


SUBSCRIBED AND SWORN TO before me, the undersigned Notary Public, on this 21<sup>st</sup> day of November, 2011.

  
Notary Public

My Commission Expires:

Feb. 3, 2015



2502615

# EXHIBIT

1

## ENTRADA DEL ORO SEWER COMPANY

### SUMMARY OF PENDING MATTERS

1. Decision No. 68306 (Nov. 14, 2005). *In the Matter of the Application of Entrada Del Oro Sewer Company for a Certificate of Convenience and Necessity for Wastewater Service*, Docket No. SW-04316A-05-0371. Decision No. 68306 ordered EDO to file a permanent rate application in its sixth year of operations, using the fifth year as the test year. On July 26, 2006, EDO informed the Commission of EDO's commencing services. The Entrada Del Oro Wastewater Treatment Plant began receiving wastewater flows in August 2007.

2. Decision No. 72631 (Oct. 14, 2011). *In the Matter of the Application of Entrada Del Oro Sewer Company for an Extension of its Certificate of Convenience and Necessity for Wastewater Services*, Docket No. SW-04316A-06-0382. Decision No. 72631 granted EDO an extension of time, until June 20, 2013, to file a copy of Approval to Construct certification for the lift station and main needed to serve the residential subdivision developed by Ranch 160, LLC, originally ordered in Decision No. 69412 (April 16, 2007).

# EXHIBIT

# 2



## LITCHFIELD PARK SERVICE COMPANY

### SUMMARY OF PENDING MATTERS

1. Decision No. 72026 (December 10, 2010). *In the Matter of the Application of Litchfield Park Service Company, an Arizona Corporation, for a Determination of the Fair Value of its Utility Plant and Property and for Increases in its Wastewater Rates and Charges for Utility Service Based Thereon*, Docket No. SW-01428A-09-0103, *et al.* Decision No. 72026 ordered that the docket remain open for purposes of considering issues concerning LPSCO's hook-up fee tariffs in a separate stage of the proceeding. Also to be determined was the surcharge mechanism for LPSCO to recover deferred revenues and carrying charges associated with implementation of the rate phase-in ordered by Decision No. 72026. A recommended order authorizing hook-up fee tariffs and a phase-in surcharge was issued on October 24, 2011 and approved at the Open Meeting held on November 8, 2011. Commission Decision No. 72826 was issued on November 17, 2011. Future compliance items include a tariff filing, notification to customers of the final rate phase-in and the phase-in surcharge, and a final accounting of surcharge revenues.

# EXHIBIT

# 3

**Liberty Water Co.**  
List of Directors

Name

Business Address

Ian Robertson

2845 Bristol Circle  
Oakville, Ontario, Canada L6H 7H7

Gregory S. Sorensen

12725 W. Indian School Road, Suite D-101  
Avondale, Arizona 85392

**Liberty Water Co.**  
List of Officers

<u>Name</u>	<u>Title</u>	<u>Business Address</u>
Ian Robertson	CEO	2845 Bristol Circle Oakville, Ontario, Canada L6H 7H7
David Bronicheski	CFO	2845 Bristol Circle Oakville, Ontario, Canada L6H 7H7

# **EXHIBIT**

**4**

